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No. 72-1289

In the Supreme Court of the United States

OCTOBER TERM, 1972

NATIONAL RAILROAD PASSENGER CORPORATION, CENTRAL OF GEORGIA RAILWAY COMPANY, AND SOUTHERN RAILWAY COMPANY, PETITIONERS

v.

NATIONAL ASSOCIATION OF RAILROAD PASSENGERS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

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The United States believes that the petition for a writ of certiorari raises an important issue of statutory construction which may have a substantial effect on the efficient operation of the National Railroad Passenger Corporation (Amtrak), the entity which Congress created for the operation of intercity railroad passenger service.

Section 370 of the Amtrak Act, 45 U.S.C. 547, gives the district court jurisdiction "upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives, to grant such equitable re-

lief as may be necessary" to correct any statutory violations by Amtrak. The Court of Appeals for the District of Columbia Circuit held that despite this carefully limited authorizing provision, other persons could sue Amtrak to enjoin violation of the Act. The question is whether the Act authorizes such persons to maintain such suits. Since the United States believes that permitting such suits is not only inconsistent with the statutory plan but would significantly adversely affect Amtrak, it urges this Court to grant the petition.

INTEREST OF THE UNITED STATES

Amtrak was created by Congress to operate intercity rail passenger service. The interest of the United States in the efficient and economical operation of Amtrak is reflected in the congressional findings and declaration of purpose in the Amtrak Act (45 U.S.C. 501):

> The Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country; that rail passenger service can help to end the congestion on our highways and the overcrowding of airways and airports; that the traveler in America should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a rail passenger corporation [Amtrak] for the purpose of providing modern, efficient, intercity rail passen-

ger service; that Federal financial assistance as well as investment capital from the private sector of the economy is needed for this purpose; and that interim emergency Federal financial assistance to certain railroads may be necessary to permit the orderly transfer of railroad passenger service to a railroad passenger corporation.

The interest of the United States is further reflected in various provisions of the statute prescribing a continuing relationship between the federal government and Amtrak. The President appoints, with Senate approval, a majority (8 members) of Amtrak's board of directors (45 U.S.C. 543). Amtrak is required to submit monthly and annual operating and planning reports to the President and to the Congress (86 Stat. 228, 45 U.S.C. 548(a) and (b)). The Secretary of Transportation is required to report annually to Congress on the effectiveness of the Act in meeting the requirements of a balanced national transportation system (45 U.S.C. 548(c), as added). Finally, and most importantly, Congress provides Amtrak with money to purchase new equipment, rehabilitate old equipment, upgrade roadbed, conduct research, and perform other related functions (45 U.S.C. 601-602).

DISCUSSION

A fundamental aspect of the congressional plan in the Amtrak Act to rehabilitate intercity rail passenger service is that Amtrak be able to discontinue promptly uneconomic and unneeded passenger rail service. The Act's legislative history indicates that Congress attempted to accomplish rapidly two related goals—first, a "rational reduction of present service"; and second, the organization of the remaining service "into a cohesive system requiring a management which takes

into consideration the needs and abilities of the entire system***."[1] In order to accomplish these goals, Congress gave Amtrak considerable latitude in the initiation and discontinuance of passenger service. Amtrak may initiate or discontinue at any time any service beyond that provided in the basic transportation system designated by the Secretary of Transportation.[2] After July 1, 1973, even the minimum service required for the basic system may be discontinued under the procedure of Section 13a of the Interstate Commerce Act (45 U.S.C. 564(b)(3).[3] States and localities have the right to require Amtrak to operate service beyond the basic system only if they agree to compensate Amtrak for the loss involved in such excess service (45 U.S.C. 563(b)).

The Secretary of Transportation's 1973 Report to Congress (pp. 7, 98) recommends a limited federal subsidy for Amtrak's operating deficit. Amtrak deficits resulting from operation of uneconomic and unneeded trains must be minimized if Amtrak's limited resources are to be put to the best possible use in the permanent

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[1]H. Rep. No. 91-1580, 91st Cong., 2d Sess., at p. 3.

[2]45 U.S.C. 563(a), 564(b)(2). The Secretary's designation of service required for the basic system is essentially a minimum of one train per day between identified end point cities. See Final Report on Basic National Rail Passenger System, submitted by John A. Volpe, Secretary of Transportation, in accordance with P.L. 91-518, January 28, 1971.

[3]The Department of Transportation has recommended to Congress that, in light of the constant federal supervision and subsidization of Amtrak, the need for approval by the Interstate Commerce Commission for discontinuance of basic system service be eliminated from the statute. Report to Congress The Rail Passenger Service Act of 1970, March 1973 ("the 1973 Report"), pp. 107-108.

improvement of the rail passenger system. The court of appeals' decision, however, is likely to frustrate that purpose.

The decision is likely to lead to a large number of lawsuits, filed by states, localitites, or private persons or associations, designed to delay or defeat Amtrak's curtailment or elimination of uneconomic or unneeded service. This is particularly likely when the only alternatives are loss of service or subsidies from local budgets for the service (45 U.S.C. 563(b)). Moreover, it is probable that stays of the discontinuance of service will be issued in many of those cases, thereby requiring Amtrak to continue the service for the duration of the litigation. The likely result of permitting such suits to be maintained, therefore, is a further drain on Amtrak's limited resources and their diversion into activities that are inconsistent with and unnecessary to the congressional plan to improve and rehabilitate intercity rail passenger service.

In view of these considerations, we submit that Congress did not intend to permit such suits to be maintained. As the petition for certiorari explains (pp. 12-16), the congressional grant of authority to the Attorney General, employees and their representatives to maintain suits to correct statutory violations reflects an intent that they alone, but not other persons, may maintain such actions. There would have been no reason for Congress to have included these limitations if the Act impliedly also permits suits by the broad range of persons who, under the court of appeals' decision, may conduct such litigation. The decision of the court of appeals is inconsistent with the legislative history of the Act, which shows that Congress imposed the limited authority to sue in Section 370 in response

to a request by the Secretary of Transportation that jurisdiction to enforce the Amtrak Act be so restricted (Pet. 15-16).

A definitive resolution of the issue by this Court is appropriate at this time. There are a number of pending cases which involve the standing issue. In some of them, *e.g., Schuler* v. *National Rail Passenger Corp.*, No. 72-CV-211 (N.D. N.Y.), and *City of New York* v. *National Rail Passenger Corp.*, No. 72-Civ. 1988 (S.D. N.Y.), local governments seek to compel Amtrak to cancel reductions in uneconomic service. In another case, *Commonwealth of Pennsylvania, et al.* v. *Baker, et al.*, No. 71-2301 (E.D. Pa.), two state authorities challenge the right of Amtrak under the Act to operate certain passenger trains between New York City and Philadelphia. Moreover, in view of the approaching substantial train discontinuances expected after July 1, 1973 (1973 Report, pp. 98-100), there is likely to be further litigation by private parties challenging Amtrak's train discontinuances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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